

ESTTA Tracking number: **ESTTA206692**Filing date: **04/23/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Board of Regents, The University of Texas System		
Entity	state institution	Citizenship	State Institution
Address	201 West 7th Street Austin, TX 78701 UNITED STATES		

Attorney information	Louis T. Pirkey Pirkey Barber LLP 600 Congress Ave., Suite 2120 Austin, TX 78701 UNITED STATES lpirkey@pirkeybarber.com, bbarber@pirkeybarber.com, shightower@pirkeybarber.com, eolson@pirkeybarber.com Phone:512.322.5200
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Applicant Information

Application No	77043344	Publication date	04/22/2008
Opposition Filing Date	04/23/2008	Opposition Period Ends	05/22/2008
Applicant	Southern Illinois Miners, LLC 2900 Highlands Godfrey, IL 62035 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. All goods and services in the class are opposed, namely: Books in the field of professional baseball; Brochures about professional baseball; Bulletins concerning professional baseball; Charts in the field of professional baseball; Informational letters concerning professional baseball; Newsletters in the field of professional baseball; Printed calendars; Printed charts; Printed emblems; Printed guides in the field of professional baseball for media use; Printed informational cards in the field of professional baseball; Printed materials, namely, press releases featuring information on topics related to professional baseball; Printed paper signs; Printed products, namely, professional baseball trading cards, professional baseball game programs, bumper stickers, calendars, paper coasters, decals, desk calendars, pennants and scorecards; pencils; pens; Printed tickets; Prints in the nature of professional sports photographs; Souvenir programs concerning professional baseball
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Class 025. All goods and services in the class are opposed, namely: Professional baseball imprinted clothing, namely, Athletic uniforms, Golf shirts, Headgear, namely, hats, caps, visors, Infant and toddler one piece clothing, Jerseys, Knit shirts, Ponchos, Short-sleeved or long-sleeved t-shirts, Short-sleeved shirts, Sweat shirts, T-shirts, and Wind shirts
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1228753	Application Date	07/20/1981
Registration Date	02/22/1983	Foreign Priority Date	NONE
Word Mark	MINERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1914/00/00 First Use In Commerce: 1914/00/00 Entertainment Services-Namely, Sponsoring and Conducting College Athletic Exhibitions and Competitions		

U.S. Registration No.	1590965	Application Date	12/29/1986
Registration Date	04/10/1990	Foreign Priority Date	NONE
Word Mark	MINERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1984/06/00 First Use In Commerce: 1984/06/00 COLLEGE IMPRINTED CLOTHING, NAMELY, SHIRTS, HATS AND BABY SHIRTS		

U.S. Registration No.	1590813	Application Date	12/29/1986
Registration Date	04/10/1990	Foreign Priority Date	NONE
Word Mark	MINERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1950/00/00 First Use In Commerce: 1984/00/00 PRINTED PROGRAMS FOR COLLEGE SPORTING EVENTS AND MEDIA GUIDES		

U.S. Registration No.	1591100	Application Date	12/29/1986
Registration Date	04/10/1990	Foreign Priority Date	NONE
Word Mark	MINERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1986/04/00 First Use In Commerce: 1986/04/00		

	MINIATURE BASKETBALLS		
U.S. Registration No.	1452290	Application Date	12/29/1986
Registration Date	08/11/1987	Foreign Priority Date	NONE
Word Mark	UTEP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1984/06/00 First Use In Commerce: 1984/06/00 CLOTHING - NAMELY SHIRTS AND HATS		
U.S. Registration No.	1450736	Application Date	12/29/1986
Registration Date	08/04/1987	Foreign Priority Date	NONE
Word Mark	UTEP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1985/09/00 First Use In Commerce: 1985/09/00 DECALS, NEWSLETTERS, PAPER NAME BADGES AND COLLEGE SPORTS MEDIA GUIDES AND PROGRAMS		
U.S. Registration No.	2992329	Application Date	07/07/2004
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1999/08/00 First Use In Commerce: 1999/08/00 Clothing, namely shirts, hats, baby shirts and baby pants</p> <p>Class 041. First use: First Use: 1999/08/00 First Use In Commerce: 1999/08/00 Educational services, namely providing college and graduate level courses of instruction, continuing education courses and seminars, and opportunities for students to participate in research programs; entertainment services, namely college sport games and events rendered live and through the media of radio and television, musical concerts and entertainment, and performances of dramatic works</p>		
U.S. Registration No.	3397296	Application Date	01/30/2007
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of	The mark consists of a pick ax.		

Mark	
Goods/Services	Class 025. First use: First Use: 2004/08/00 First Use In Commerce: 2004/08/00 Shirts, jackets, warm-up suits, sweat shirts, sweat pants, caps, bandanas, shorts, scarves, ponchos, raincoats, tank tops, sweat bands, cloth baby bibs, baby panties and dresses, wrist bands, belts, socks, wind suits

Related Proceedings	The parties are also involved in Opposition No. 91182186 involving similar marks
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/LTP/
Name	Louis T. Pirkey
Date	04/23/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Serial No. 77043344	§	
Filed: November 14, 2006	§	
Mark: Southern Illinois Miners & Design	§	
Published: April 22, 2008	§	
	§	
The Board of Regents,	§	
The University of Texas System,	§	
	§	Opposition No. _____
Opposer,	§	
	§	
v.	§	
	§	
Southern Illinois Miners, LLC,	§	
	§	
Applicant.	§	

NOTICE OF OPPOSITION

The Board of Regents, The University of Texas System ("Opposer"), a state institution of higher education with a principal place of business at 201 West 7th Street, Austin, Texas 78701, believes that it will be damaged by registration of the mark identified above for the goods recited in Classes 16 and 25, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts that:

1. The Board of Regents, The University of Texas System, is a state board established for the purpose of governing The University of Texas System, including The University of Texas at El Paso ("UTEP"). The powers and duties of The Board of Regents, The University of Texas System, are set forth generally at Chapter 65 of the Texas Education Code. Specific authority to manage and control UTEP is conferred upon The Board of Regents, The University of Texas System, by Chapter 69.02 of the Texas Education Code.

2. Since its founding in 1914, UTEP, Texas' first school of mines, has devoted its efforts to providing quality educational services at the college and, later, graduate level. UTEP also has provided and continues to provide entertainment services such as college athletic events.




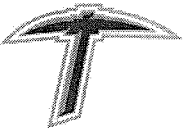
3. In connection with these services, and to promote the services through the sale of licensed products, UTEP has adopted and has long and continuously used certain trademarks and service marks, including but not limited to the mark MINERS and designs incorporating images of miners and their tools (hereinafter referred to as "MINERS Marks"). The MINERS Marks have long been a feature of UTEP's athletic teams and a symbol of UTEP in general.

4. Opposer's MINERS Marks are inherently distinctive, serving to identify and indicate the source of Opposer's goods and services to the consuming public, and to distinguish Opposer's goods and services from those of others.

5. Additionally, as a result of Opposer's use and promotion of its MINERS Marks, the marks have become distinctive and are recognized by consumers. Opposer has invested significant effort and resources in advertising and promoting its MINERS Marks and the goods and services sold under those marks, with the result that the purchasing public has come to know, rely on, and recognize the goods and services of Opposer by those marks. Opposer has established valuable goodwill in its MINERS Marks.

6. Opposer's MINERS Marks are famous pursuant to 15 U.S.C. § 1125.

7. In addition to its extensive common law rights, Opposer is the owner of eight United States Trademark Registrations covering its MINERS Marks, as shown in the following chart.

Mark	Registration No.	Registration Date	First Use	Goods & Services
MINERS	1228753	Feb. 22, 1983	1914	Entertainment services – namely, sponsoring and conducting college athletic exhibitions and competitions, in Class 41
MINERS	1590965	April 10, 1990	June 1984	College imprinted clothing, namely, shirts, hats and baby shirts, in Class 25
MINERS	1590813	April 10, 1990	1950	Printed programs for college sporting events and media guides, in Class 16
MINERS	1591100	April 10, 1990	April 1986	Miniature basketballs, in Class 28
	1452290	Aug. 11, 1987	June 1984	Clothing – namely shirts and hats, in Class 25
	1450736	Aug. 4, 1987	Sept. 1985	Decals, newsletters, paper name badges and college sports media guides and programs, in Class 16
	2992329	Sept. 6, 2005	Aug. 1999	Clothing, namely shirts, hats, baby shirts and baby pants, in Class 25 Educational services, namely providing college and graduate level courses of instruction, continuing education courses and seminars, and opportunities for students to participate in research programs; entertainment services, namely college sport games and events rendered live and through the media of radio and television, musical concerts and entertainment, and performances of dramatic works, in Class 41
	3397296	March 18, 2008	Aug. 2004	Shirts, jackets, warm-up suits, sweat shirts, sweat pants, caps, bandanas, shorts, scarves, ponchos, raincoats, tank tops, sweat bands, cloth baby bibs, baby panties and dresses, wrist bands, belts, socks, wind suits, in Class 25

Each of the registrations listed in the chart above is valid and subsisting, and all but the final two are incontestable pursuant to 15 U.S.C. § 1065.

8. Applicant Southern Illinois Miners, LLC is an Illinois limited liability company with a business address of 2900 Highlands, Godfrey, IL 62035. Applicant filed Application Serial No. 77043344 (the "Application") on an intent-to-use basis pursuant to 15 U.S.C. § 1051(b) on November 14, 2006 for the mark SOUTHERN ILLINOIS MINERS and design (hereinafter referred to as "Applicant's MINERS and Design Mark") for "Professional baseball imprinted clothing, namely, Athletic uniforms, Golf shirts, Headgear, namely, hats, caps, visors, Infant and toddler one piece clothing, Jerseys, Knit shirts, Ponchos, Short-sleeved or long-sleeved t-shirts, Short-sleeved shirts, Sweat shirts, T-shirts, Wind shirts," in Class 25; and for "Books in the field of professional baseball; Brochures about professional baseball; Bulletins concerning professional baseball; Charts in the field of professional baseball; Informational letters concerning professional baseball; Newsletters in the field of professional baseball; Printed calendars; Printed charts; Printed emblems; Printed guides in the field of professional baseball for media use; Printed informational cards in the field of professional baseball; Printed materials, namely, press releases featuring information on topics related to professional baseball; Printed paper signs; Printed products, namely, professional baseball trading cards, professional baseball game programs, bumper stickers, calendars, paper coasters, decals, desk calendars, pennants and scorecards; pencils; pens; Printed tickets; Prints in the nature of professional sports photographs; Souvenir programs concerning professional baseball," in Class 16. (The Application also covers "Entertainment in the nature of professional baseball games," in Class 41. Opposer does not oppose the Application to register these Class 41 services.)

9. Applicant is a professional baseball team in the Frontier League.

10. The Application was initially refused due to a likelihood of confusion with Opposer's Registrations No. 1228753, 1590813, and 1590965. The Examining Attorney determined that Applicant's mark was highly similar to three of Opposer's MINERS Marks, and that the goods and services recited in the Application were highly related to those recited in Opposer's three referenced registrations.

11. Opposer has priority based on its prior use and registration of its MINERS Marks in the United States.

12. Applicant's MINERS and Design Mark is confusingly similar to Opposer's MINERS Marks, and the goods in the Application that are the subject of this opposition are highly related to the goods for which Opposer uses and has registered its MINERS Marks.

13. Opposer has not given Applicant permission or approval to use or register the Applicant's MINERS and Design Mark.

14. Applicant's MINERS and Design Mark so resembles Opposer's MINERS Marks as to be likely, when used on or in connection with the identified goods of Applicant, to cause confusion, or to cause mistake, or to deceive. Registration therefore should be refused under 15 U.S.C. § 1052(d).

15. Applicant's MINERS and Design Mark is likely to cause dilution by blurring or dilution by tarnishment of Opposer's famous MINERS Marks, and registration should also be refused under 15 U.S.C. § 1125(c).

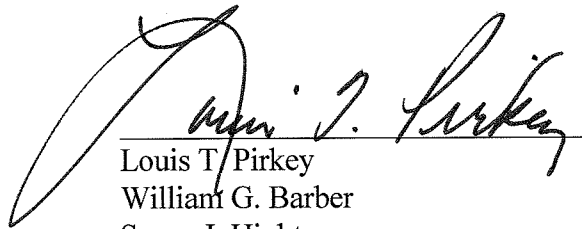
16. Registration of Applicant's MINERS and Design Mark on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations and common law and would be damaging to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77043344 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber LLP, Account No. 50-3924/UTEX:038/LTP, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: 4/23/08

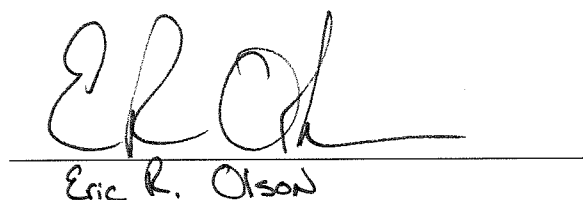


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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail on April 23, 2008 upon Applicant's attorney:

Chad Brigham
Heitland and Leach, LLC
46 Marshall Place
Saint Louis, MO 63119-2321



Eric R. Olson